IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

CRP.No. 1542 of 2000(A)

AA.106/1996 of APPELLATE AUTHORITY, (LR), KANNUR
IN SM 352/84 OF LAND TRIBUNAL CANNANORE

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REVN. PETITIONER: Third respondent/2nd respondent:

Cheriya Vayathankalath Kunhi Mariyam, D/o. Ayar Ibrahim, Valapattanam amsom and desom.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS:Appellant & respondents 1,2 & 4 to 7/Petitioner & Respondents 1 and 3

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1. Sri.Chalikandy Peedikayil Ahamed, S/o. Mammu, "Rukhia Manzil", Valapattanam (died LRs impleaded)

2. Baliapattanam Jumayath Palli, Valapattanam.

3. Thuruthiyilakath Thottinakkara Puthiya Purayil Abdulla, Valapattanam amsom and desom (died).

4. P.K.Nafeeza, W/o. T.T.P.Abdulla, 'Mecca', No.206 Lloyd's Road Chennai 86.

5. P.K.Muhammed, S/o. T.T.P. Abdulla, do. do.

6. P.K.Zeenath, D/o. do. do.

7. P.K. Nazer, S/o. do. do.

Suppl. 8. State of Kerala rep. by Chief Secretary, Secretariat, Trivandrum.

Supplemental 8th respondent is impleaded as per order dt. 4.10.2001 on CMP 5155/2001.

Suppl. 9. Makkiya Valappil Rukkiya, W/o. C.P.Ahamed, Rukkiya Manzil, Valapattanam.

Suppl.10. Haseena, aged non known D/o. C.P. Ahamed, residing at do. do.

Suppl.11. Fauziya, do. do.

Suppl. 12. Khadeeja do. do.

Suppl. 13. Mumtaz, do. do.

Suppl. 14. Ouzhat, do. do.

The above persons being the legal heirs of the deceased first respondent are impleaded as the supplemental respondents 9 to 14 vide order dt.31.10.01 on IA 76/07.

BY ADV. SRI.C.K.SUDHEER FOR R1
GOVERNMENT PLEADER SMT. R. BINDU FOR R8
SRI.M.A.NISSAR FOR R5
SRI.S.M.PREM & SRI.NASSER ABDULLA FOR R7
SMT.K.P.SANTHI
SRI.P.RAMACHANDRAN (PALAKKAD)
SMT.MARIYAM NISSAR
SMT.ANALAKHUSI BHASKAR
SRI.P.U.SHAILAJAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP 5303/01 IN CRP 1542/00

DISMISSED.

SD/- M.N.KRISHNAN, JUDGE.

5/11/2007

M.N.Krishnan, J.

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C.R.P.No.1542 of 2000

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Dated this the 5th day of November, 2007.

ORDER

This revision petition is preferred against the order of the Appellate Authority (L.R.), Kannur in A.A.No.106 of 1996. For understanding the facts reference to the rank of the revision petition will be of help and therefore I resort to the same. Revision petitioner is a third party intervenor. First respondent is the person who has claimed right with respect to 15 cents of land in Re-survey No.13/7 of Valapattanam Village. He died and his legal representatives are respondents 9 to 14. Second respondent is the landlord of the property and third respondent is the intermediary. Respondents 4 to 7 are the legal representatives of deceased third respondent.

2. The case had a very long career and initially there was a decision in favour of the first respondent herein with respect to assignment of 12 cents of land in Re-survey No.13/7 of Valapattanam Village against which an appeal was preferred and it was remanded. On remand, it was found that he is entitled to only 3 1/2 cents of land in Re-survey No.13/7. An appeal is filed by the first respondent in the revision against the order of disallowing assignment of 15 cents of land in Re-survey No.13/7. The Appellate Authority made so many observations and had just set aside the order. It also opined that the intermediary is only

entitled to 1 acre and not 1.60 acres of land and therefore the Village Officer shall not collect the basic tax for 1.60 cents of land. The Appellate Court also observed regarding the genuineness of Marupattam and subsequent gift deed that the legal heirs could move before the civil court and the case was disposed of accordingly.

3. It is true that at every level some confusion has crept in in the mind of all and therefore, it is desirable to give a clear cut direction in this matter. Fundamentally it has to be understood, then when an application for purchase right is filed the question to be adjudicated is whether the person who claims to be a tenant is entitled to fixity of tenure over the property which he has claimed in this case. First respondent in the revision petition has claimed 15 cents of land on the basis of an oral lease alleged to be given by the intermediaries in favour of his father. The intermediaries did not resist the claim of the claimant. Now at a later stage, the present revision petitioner enters as an intervenor and contends that he is entitled to 1.05 acres of land on the basis of marupattam and 15 cents applied for assignment by the alleged cultivating tenant in this case is included and therefore the claim of alleged cultivating tenant has to be in the above 1.05 acres. Or in short, the crux of the matter revolves upon the question whether the person who had leased the property in favour of the predecessor in interest of the alleged cultivating tenant is entitled to such property and whether the cultivating tenant is in possession of the property under that

document and is entitled to fixity of tenure.

4. It has to be stated that the provisions of the Kerala Land Reforms Act deals with the question of tenancy and a person who had been a tenant of the property prior to 1.4.1964 is entitled to apply for certificate of purchase under Section 72 of K.L.R. Act and as the entire rights of the intermediaries and landlord vest in the Government on 1.1.1970, the Tribunal, a statutory authority, constituted under the Act, may look into the question and issue a certificate of purchase in favour of the cultivating tenant if he satisfies all the necessary ingredients and that such certificate issued under Section 72 of K.L.R. Act is conclusive proof of tenancy. So, this is what is to be precisely done by the Tribunal in a matter pending before it.

5. Now there are decisions of this Court and when a person intervenes and attempts to intermeddle with the right then the Tribunal as a logical corollary has to decide on that issue for the purpose of finding out whether the cultivating tenant who has applied for certificate of purchase is entitled to get assignment of the property. So, it becomes an incidental question for determining the point which the Tribunal has to consider. Therefore, I feel that it is a case where approach made by the authorities is not fully correct and it requires to be set aside.

6. Therefore, the order of the Appellate Authority is set aside and the matter is remitted back to the Land Tribunal for consideration whether the first respondent in this revision petition is a tenant of 15 cents of property comprised in Re-survey

No.13/7 of Valapattanam Village. Incidentally, the Tribunal has also to consider the question whether this 15 cents claimed by the alleged tenant is the property belonging to the intervenor who claims the property under the marupattam of the year 1942. In deciding this issue most probably a role has to be played by the intermediaries and the landlord for the reason that they will be aware of what has transpired earlier and so with the junction of all the parties the Tribunal may consider the question and pass appropriate orders in accordance with law. Being a very old matter, I direct the Land Tribunal concerned to dispose of the matter as expeditious as possible, at any rate, within a period of three months from the first appearance of the parties before the Tribunal. Parties are directed to appear before the Tribunal on 5.12.2007. I make it clear that if any interim order is necessary for any of the parties, they are at liberty to file an application under Rule 92 of the Kerala Land Reforms Tenancy Rules and the Land Tribunal is directed to pass appropriate orders after hearing the parties in accordance with law. Further I make it clear that this will not stand in the way of resolving a larger dispute between the intervenors and the intermediaries by the civil court.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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